United Nations ST/AI/2004/3

Secretariat

29 September 2004

Administrative instruction

Financial responsibility of staff members for gross negligence

The Under-Secretary-General for Management, pursuant to section 4.2 of Secretary-General's bulletin ST/SGB/1997/1 and for the purpose of implementing the provisions of staff rules 112.3, 212.2, and 312.2, and the provisions of financial rule 101.2, hereby promulgates the following:

Section 1
General

1.1 The present instruction defines the conditions for implementing staff rules 112.3, 212.2, and 312.2, under which staff members may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's gross negligence or of his or her having violated any regulation, rule or administrative instruction. It also defines the conditions for implementing financial rule 101.2, under which any staff member who contravenes the Financial Regulations and Rules or corresponding administrative instructions, may be held personally accountable and financially liable for his or her actions.

1.2 The provisions of the present instruction are based on the Organization's established policy to maintain a clear distinction between:

(a) Instances where a financial loss suffered by the Organization results from an inadvertent error, oversight or simple negligence, or inability to foresee the negative consequences of a chosen course of action, in which case no financial recovery against staff members shall be undertaken and any deficiencies on the part of the officials involved shall be addressed through performance management mechanisms; and

(b) Instances where a financial loss results from gross negligence, as defined in section 1.3 below. Financial responsibility in such instances shall be established in accordance with the provisions set out in the present instruction.

1.3 For the purposes of the present instruction, "gross negligence" is negligence of a very high degree involving an extreme and wilful or reckless failure to act as a reasonable person in applying or in failing to apply the regulations and rules of the Organization.

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1.4 Cases where losses result from gross negligence as defined above may also give rise to disciplinary proceedings under chapter X of the Staff Rules.[1] In order to ensure consistency of findings and protection of the due process rights of the staff members involved, disciplinary action and recovery action for financial losses shall be consolidated wherever grounds exist to initiate both actions.

Section 2
Scope

2.1 The present instruction shall apply to cases of gross negligence in the application of the Staff Regulations and Rules and of the Financial Regulations and Rules, as well as Secretary-General's bulletins and administrative instructions implementing those Regulations and Rules.

2.2 The present instruction shall not apply to:

(a) Recovery from staff members of overpayments made to them in excess of their entitlements. Such recovery is governed by the provisions of administrative instruction ST/AI/2000/11;

(b) Loss, damage or other discrepancy regarding the property of the United Nations, which shall be considered by a property survey board in accordance with financial rule 105.21. For purposes of the present instruction, "property" shall mean supplies, equipment, building and land belonging to or entrusted to the charge of the United Nations.

Section 3
Preliminary investigation

3.1 When the head of a department or office has reason to believe that the gross negligence of a staff member may have led to financial loss by the Organization or receives credible allegations to that effect, the head of department or office concerned shall immediately inform the Controller and the Under-Secretary-General, Office of Internal Oversight Services (OIOS), and take the necessary steps to secure available evidence. The head of department or office shall initiate a preliminary investigation of the facts to determine whether there was gross negligence and a resulting financial loss, unless OIOS or the Controller advises the head of department or office within two weeks that the matter will be investigated by the respective department or office.

3.2 Allegations of gross negligence resulting in financial loss by the Organization and pertaining to a head of department or office shall be reported to the Controller and to the Under-Secretary-General for OIOS. Unless OIOS advises the Controller that it intends to investigate the matter, the preliminary investigation shall be conducted by officials designated by the Controller.

3.3 The investigation shall be conducted promptly and shall normally be completed within six months unless extraordinary circumstances arise, which would justify completion at a later stage.

[1] The procedures applicable in disciplinary cases are set out in administrative instruction ST/AI/371 of 2 August 1991.

3.4 If the allegations are of such nature and gravity that suspension may be warranted, or if there is a risk of evidence being destroyed or concealed, the investigating authority shall recommend suspension pending investigation to the Assistant Secretary-General for Human Resources Management, giving reasons. Suspension shall normally be with pay, unless the Under-Secretary-General for Management, on behalf of the Secretary-General, decides that exceptional circumstances warrant suspension without pay. Suspension with or without pay shall be without prejudice to the rights of the staff member.

3.5 If the staff member under investigation separates or is due to separate from service before the conclusion of the proceedings under section 4 below, the Assistant Secretary-General for Human Resources Management, at his or her own initiative or at the request of the Controller, may authorize withholding of final separation payments until the proceedings have been concluded.

3.6 The investigation report, together with supporting evidence and a computation of the amount of the financial loss involved shall be submitted to the Controller and to the Assistant Secretary-General for Human Resources Management.

Section 4
Action following preliminary investigation

4.1 After analysis of the investigation report, together with supporting evidence and a computation of the amount of the financial loss involved, the Assistant Secretary-General for Human Resources Management, after consultation with the Controller, shall decide whether the allegations of gross negligence appear to be substantiated. If the allegations are not substantiated, the staff member, the department or office concerned and OIOS shall be informed in writing that the case for recovery is closed and that the evidence does not support recovery action and/or the allegations of gross negligence.

4.2 If the allegations appear to be substantiated, a designated official of the Office of Human Resources Management shall:

(a) Inform the staff member in writing of the allegations of gross negligence and resulting financial loss, and of his or her right to respond;

(b) Provide the staff member with a copy of the documentary evidence of the gross negligence, a computation of the resulting financial loss, which the Organization proposes to recover, and an explanation of the basis on which the computation was made; and

(c) Notify the staff member of his or her right to counsel.

4.3 The staff member shall be given a specified time to answer the allegations and produce countervailing evidence, if any. The amount of time allowed shall take into account the seriousness and complexity of the matter. If more time is required, it shall be granted upon the staff member's written request for an extension, giving cogent reasons why he or she is unable to comply with the deadline. If no response is submitted within the time limit, the matter shall nevertheless proceed.

4.4 The entire dossier shall be submitted to the Assistant Secretary-General for Human Resources Management who, in consultation with the Controller, shall take one of the following actions, as appropriate:

(a) Decide that the case should be closed and inform the staff member and the department or office concerned to that effect; or

(b) Refer the matter to the Joint Disciplinary Committee at Headquarters, which shall consider it in accordance with chapter X of the 100 series of the Staff Rules and part III of administrative instruction ST/AI/371, with the following adjustments:

(i) As required by staff rule 110.6 (i), the level of the members constituting the panel shall be at least the same as the level of the staff member whose financial responsibility for gross negligence may be engaged;

(ii) As required by staff rule 110.7 (e), a representative of the Office of Legal Affairs shall participate in the deliberations of the Committee on an ex officio basis in an advisory capacity; and

(iii) The report of the Joint Disciplinary Committee shall set out the allegations of gross negligence and of resulting financial loss, the response of the staff member, a statement of the proceedings, the findings of the Committee on each allegation and the advice of the Committee to the Secretary-General on the proposed recovery, taking into account any relevant aggravating or mitigating factor. The report should also include any dissenting or separate opinion of the Committee members;

(c) Transmit the report of the Joint Disciplinary Committee with maximum dispatch to the Secretary-General through the Under-Secretary-General for Management. The decision on the Committee recommendation shall be taken by or on behalf of the Secretary-General. Any recourse against the decision shall be submitted to the United Nations Administrative Tribunal.

4.5 The staff member may, at any time during the investigation and before submission of the report of the Joint Disciplinary Committee, decide to waive his or her right to having the case decided in the light of the report of that Committee and agree in advance to recovery by the Organization of a specified amount established by the Assistant Secretary-General for Human Resources Management in consultation with the Controller. The staff member shall be assisted by counsel in deciding on the waiver, unless he or she specifically declines such assistance. Should the allegations against the staff member be based on misconduct as well as gross negligence, the waiver should, whenever possible, encompass both the disciplinary and the financial recovery aspects of the case. Should the waiver be limited to either misconduct or gross negligence charges, the case before the Joint Disciplinary Committee would proceed on the charges for which no waiver has been made. The terms of the waiver shall be recorded in writing.

Section 5
Final provision

The present administrative instruction shall enter into force on 1 October 2004.

(*Signed*) Catherine **Bertini**
Under-Secretary-General for Management